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Attorney for Plaintiff and Counter-Defendant
Gregory Bender

Attorneys for Defendant and
Counter-Claimant International
Business Machines Corporation

E-FILED - 10/5/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Gregory Bender,

Plaintiff and Counter-Defendant,

v.

International Business Machines
Corporation,

Defendant and Counter-Claimant.

Case No. C09-01249-RMW

**STIPULATION AND []
ORDER OF DISMISSAL OF
CLAIMS AND COUNTERCLAIMS
WITH PREJUDICE**

Plaintiff and Counter-Defendant Gregory Bender and Defendant and Counter-Claimant International Business Machines Corporation inform the court that they have reached agreement on the terms of dismissal of the claims and counterclaims in the above-entitled action and hereby submit this Stipulation of Dismissal.

Pursuant to Rule 41(a)(2) and (c) of the Federal Rules of Civil Procedure, the parties hereby stipulate to dismiss WITH PREJUDICE all claims and counterclaims in this action asserted by the parties, with each party to bear its own costs, expenses, and attorney's fees.

SO STIPULATED.

Respectfully submitted,

Dated: September 27, 2010

Jones Day

By: /s/ Gregory Lippetz

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Counsel for Defendant and Counter-Claimant
International Business Machines Corporation

In accordance with General Order No. 45, Section X(B), the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

Dated: September 27, 2010

By: /s/ David Kuhn

David N. Kuhn
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Telephone: (510) 653-4983

Counsel for Plaintiff and Counter-Defendant
Gregory Bender

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 10/5, 2010

By: 

THE HON. RONALD M. WHYTE
United States District Court Judge

SVI-85027v1